

The Hon. Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

JENNIFER P. SCHWEICKERT,
Plaintiff,
v.
HUNTS POINT VENTURES, INC.; HUNTS
POINT VENTURE GROUP, LLC; CHAD
RUDKIN and ELIZABETH RUDKIN, and
their marital community comprised thereof;
JOHN DU WORS; and DOES 104;
Defendants.
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No.: 13-cv-00675 RSM
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JOYCE SCHWEICKERT'S AND T.
JEFFREY KEANE'S MOTION TO
QUASH SUBPOENAS AND FOR
SANCTIONS
)
NOTE ON MOTION CALENDAR:
Friday, Sept. 26, 2014
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I. INTRODUCTION

Counsel for defendant John Du Wors issued subpoenas to Apple and Google, seeking production of emails sent or received by nonparties Joyce Schweickert and T. Jeffrey Keane. Joyce Schweickert and T. Jeffrey Keane ask the Court to enter an order quashing these subpoenas and requiring defendant Du Wors and/or his counsel to pay the reasonable attorneys' fees incurred by Joyce Schweickert in resisting the subpoenas.¹

¹ Jennifer Schweickert has filed a motion to quash the two subpoenas. Dkt # 63. Joyce Schweickert and Mr. Keane have filed a joinder in Jennifer Schweickert's motion to quash. Dkt. # 66. Joyce Schweickert and Mr. Keane submit this independent motion to quash in order to assert additional grounds not set forth in Jennifer Schweickert's motion.

II. FACTS

Joyce Schweickert is the mother of Jennifer Schweickert, plaintiff in this action. Attorney T. Jeffrey Keane has represented Joyce Schweickert for many years and continues to represent her in a variety of legal matters.² Neither Joyce Schweickert nor T. Jeffrey Keane is a party to this action.

Pursuant to Fed.R.Civ.P. 45, counsel for defendant John Du Wors issued subpoenas to Apple and Google. The Apple subpoena demands the production of electronic correspondence in the email accounts of Jennifer Schweickert sent to or received from (among others) Joyce Schweickert (joyceschweicert@gmail.com) or Mr. Keane (tjk@tjkeanlaw.com). Dkt. # 63, at 2; Dkt. # 63-1 at 3-6. The Google subpoena demands the production of such correspondence in the email account of Mark Phillips sent to or received from (among others) Joyce Schweickert (joyceschweickert@gmail.com) or Mr. Keane (tjk@tjkeanlaw.com). Dkt. # 63, at 3; Dkt. # 63-1 at 7-10.

III. AUTHORITY AND ARGUMENT

A. The Subpoenas Must Be Quashed Because They Violate the Federal Stored Communications Act.

The subpoenas are in clear violation of the Stored Communications Act (“SCA”), 18 U.S.C. §§ 2701-2711.³

Courts have repeatedly held that the SCA prohibits electronic communication service providers such as Apple and Google from producing emails and other electronic

² Mr. Keane is currently out of the country on vacation. Thomas J. Degan, an attorney employed by Keane Law Offices, submits this motion on behalf of Joyce Schweickert and Mr. Keane.

³ The SCA is a component of the Electronic Communications Privacy Act (ECPA), Pub. L. No. 99-508, 100 Stat. 1848 (codified as amended in scattered sections of 18 U.S.C.). In discussing the sections of 18 U.S.C. that make up the SCA, some judicial opinions refer to the ECPA rather than using the term “Stored Communications Act” or “SCA.”

1 communications in response to civil discovery subpoenas. *E.g., Bower v. Bower*, 808
2 F.Supp.2d 348, 349-350 (D.Mass. 2011); *In re Facebook, Inc.*, 923 F.Supp.2d 1204, 1205-
3 1206 (N.D.Cal. 2012); *Chasten v. Franklin*, 2010 WL 4065606 at *2 (N.D.Cal. 2010).
4 Although the SCA lists a number of exceptions to this prohibition, there is no exception for
5 responding to a civil subpoena. *Id.* In other words, the SCA flatly prohibits the disclosure
6 sought by the subpoenas issued by Mr. Du Wors’s counsel.
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9 **B. The Subpoenas Must Be Quashed Because They Are Overly Broad and
Because They Demand Private, Personal Communications Irrelevant to
Any Issue in This Case.**

10 Independent of the prohibition by the SCA, the Court should also quash the subpoenas
11 because they are overly broad. The subpoenas make no attempt whatsoever to limit the
12 subject matter of the requested communications. Instead, they seek every email exchanged
13 between Jennifer Schweickert or Mark Philips and any of the listed persons, within a period
14 of more than a year and a half. The subpoenas would sweep up every email, no matter what
15 its subject. Moreover, the scope of the subpoenas extends to intensely private and personal
16 emails between a mother and daughter. For these reasons, too, the Court should quash the
17 subpoenas.

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19 **C. The Court Should Require Defendant Du Wors and/or His Counsel to Pay
Joyce Schweickert the Reasonable Attorneys’ Fees that She Has Incurred
in Resisting the Subpoenas and in Prosecuting this Motion.**

20 Rule 45(d)(1) of the Federal Rules of Civil Procedure provides in pertinent part:
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22 **(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney
23 responsible for issuing and serving a subpoena must take reasonable steps to
24 avoid imposing undue burden or expense on a person subject to the subpoena.
The court for the district where compliance is required must enforce this duty
and impose an appropriate sanction—which may include lost earnings and
reasonable attorney’s fees—on a party or attorney who fails to comply.
25

1 Defendant Du Wors and his counsel have imposed undue burden and expense on Joyce
2 Schweickert by issuing subpoenas that are plainly in violation of the federal Stored
3 Communications Act (SCA). Under the SCA, it is illegal for Apple or Google to comply with
4 these subpoenas. See, *Bower; In re Facebook, Inc.; Chasten*, above. In addition, and as an
5 independent basis for imposition of sanctions, defendant Du Wors and his counsel have
6 imposed undue burden and expense on Joyce Schweickert by issuing blanket subpoenas that
7 are unlimited in subject matter and therefore overly broad. The Court should require
8 defendant DuWors and/or his counsel to pay the attorneys' fees incurred by Joyce
9 Schweickert in resisting the subpoenas and pursuing this motion.

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11 DATED this 9th day of September, 2014.

12 KEANE LAW OFFICES
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s/ Thomas J. Degan Jr.
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